

MINUTES
Newport Business License
Work Group Meeting
Conference Room “A”
Monday, September 8, 2014

Ad Hoc Members Present: Ralph Busby, Mark Saelens, Bob Berman, and Rod Croteau.

City Staff Present: City Manager Spencer Nebel, Community Development Director (CDD) Derrick Tokos, Finance Director Mike Murzynsky, Executive Assistant Wanda Haney, and Chief of Police Mark Miranda (*who joined the meeting after it began*).

A citizen, Dick Fowler, said that he couldn't stay for the meeting but had some concerns he wanted to express to the group for their consideration. He thought that there should be some discussion about the flat fee for business licenses because he is just a one-person small office and pays the same as a large business. He also noted that he feels each individual vendor at events like the Farmers' Market should be paying for a business license rather than having just the one blanket license. Busby explained to Fowler that there will be more discussion. These changes will be drafted into a draft code, and then it will go before the City Council where there will be a public hearing.

Busby called the meeting to order at 3:06 p.m. Croteau noted a correction to a word in the minutes of the last meeting. The minutes of August 6, 2014, were approved as corrected by unanimous voice vote following a motion made by Berman, seconded by Croteau.

Review of Proposed Changes to the Business License Ordinance: Busby noted that the members had received the draft that Tokos put together of the old ordinance with the changes in it; which he noted was a lot of work. Busby had a question on the endorsement issue. He said that most business licenses are issued as business licenses and that's it. Then you get into the special issuances like with cabs. Tokos said there are four that require endorsements; cabs, vacation rentals, vending, and medical marijuana. Busby said they have talked about at the Airport if and when they need to grant licenses, rather than a whole separate process that we use the business license process; and it would end up being an endorsement. So his question was if there need to be words to that effect or a separate paragraph as an addition to the administrative area; maybe not spelling it out, but for certain circumstances endorsements will be required, and this is how it's administered or something. Berman thought we wouldn't want to list them. He also wanted to note that under "Purpose and Scope" in the second paragraph it says business license "fee," and he suggested dropping that word. It was noted that taxi cabs have a whole other section. Tokos said he could put under "Application" (.040) something that spells out that if an endorsement is required, you are to include that application as well or some such verbiage and pull it in that way. Then when you get to "Denial," one of those is if you didn't provide the required information; and endorsements would be hooked in that way rather generally. That way, if there is a new endorsement for the Airport, we don't have to amend this section. Busby thought that would address it. If there is a new Airport endorsement and we're asked where we came up with that, we can say this is our process and here is where it's addressed. Tokos said he could add that in.

Tokos had prepared PowerPoint slides to go through each section. He noted that he had nothing under "Purpose and Scope." He didn't touch it. Under "Definitions," he did clarify the definition of "business" to get rid of the reference to the same term, which is confusing when defining the term itself. Tokos had looked at 18 different jurisdictions' business license codes, and there are plenty more. They are all a little different, but one thing they do have in common is that a business is doing it for some sort of income or profit. That is the theme you see in there, so income seems to make the most sense. He added "for-profit" and "non-profit." Busby asked about "not-for-profit" because there are not-for-profit corporations. Tokos said we do use that as a definition, so he will make that change. Berman thought it would read better if the word "operating" were added after "of any nature." He said regarding the not-for-profit thing, there are 27 different categories in the IRS code. Do we need to know if they are a 501C or another type? Saelens said we want to know as well as we can about that entity. We're not charging for not-for-profits. He thought the answer is yes, we want to know the full scope of the operation. Berman asked if it's our intention to waive the fee for all of these organizations; charitable, etc. Tokos said that is what we do now. Busby said you can have a not-for-profit that isn't charitable. He gave an example of one that returns profits as investment into the company. These are companies with thousands of employees. Croteau said if we single them out, it will be difficult. Tokos said the justification would be difficult. He said in reviewing these other business license codes, it's not uncommon to include not-for-profits as having to have business licenses but are not paying a fee. Saelens said a report came out that highlighted how much drive from not-for-profits supports our overall GNP in the country, and nobody recognizes that. If that is the case at the national level, we want to know as much as we can about what is driving our economy here. Busby said that he agreed with Croteau, if we try to divide these we will be opening the door up to a nightmare.

The next definition where Tokos made a change was "employee." He noted that there were lots of different ones with the different jurisdictions. He added language to include contractors and persons volunteering their time. Saelens wondered if there

are any loopholes with when you have to fill out a W-2; such as if you work less than 500 hours or something. Murzynsky said they still fill out a W-2. Any time you control their hours, they are an employee. Busby added that you can have them as a 1099 contractor, and you still have to report that. Tokos noted that he didn't make any changes to the definition of "person." He said there is a difference between what constitutes a person in the other codes. Tokos noted that the issue the Embarcadero had is addressed elsewhere. He said that the last change to the definitions is for "rental of real property." He pulled out the exemption because it is an exemption, not part of the definition.

The next section, "Business License Required," is one that he added. It was stuck in the exemption section. He said that for the code we want it structured to lead with "you have to get a business license unless otherwise exempted." It was in the wrong spot in our ordinance.

Tokos noted that the "Exemptions" section has been restructured. It includes the ones that were already in there, the ones that were tucked elsewhere in the code, and four additional exemptions common in a lot of other codes and consistent with our current practices that we should be following. One of those added is "J", persons whom the City is prohibited from licensing. Busby said an example of that would be the ICC exemption for truckers. Tokos said if the City is trumped by a higher authority it's good to have that language in here. Item "H" gets to kids under 18 years of age. A number of jurisdictions have that; they just write it differently. It's pretty common. We do not require business licenses of our franchisees. We should list that exemption, and that is covered by item "I". He didn't contact our attorney to see if we are limited there. We charge the franchisees for the use of the rights-of-way. We could get in trouble for charging them more than is allowed by law. Berman said that's why we can't count business licenses if we're asked how many businesses there are. He assumes that Charter and Thompsons are franchisees. Tokos said and Georgia Pacific, which doesn't have a single building in the city; just pipes. Thompsons has properties. He said it runs a gamut. The question is why that is not there. There is a limitation legally, and we can only charge so much. Saelens said franchise fees are more money, the license fees are not even going to be a percentage of it. Busby said we could change that at some time, but we run into the limits. Tokos said he didn't know why we don't have that exemption in there. He did confirm with Finance staff that we are not charging for a business license from our franchisees.

Saelens said since Mr. Fowler asked prior to the meeting, regarding special events he wondered what the feeling is about charging all individuals within the Saturday Market. Busby said they are covered under the single business license. He said it's such a routine thing that perhaps they should be. Tokos said one thing you could do is hike the fee for the event organizer to pick that up. Some of the individuals may just set up shop for one event. Saelens said that he had the reversed opinion. He knows some people are there every single time; so it could be a little bit of a loophole. He sees that being outside the ordinance so we can resolve that by Council resolution when we feel the need to. Berman thought maybe the fee for the event organizer based on the number of vendors they have. Spencer asked if there is a business license being paid by the Farmers' Market. He was told yes, one. He asked about the Home and Garden Show, which is a one-time-a-year event. Berman asked if these events could be given something like a rate for the organizer and then a \$1 per vendor rate. Croteau said it comes back to the purpose. One reason is to know what is going on. They have to list who are there on their license. It's not any more burdensome on the small guy as long as we know what they are doing, who they are, and get enough money to cover the City. Nebel said that all vendors at the Home and Garden Show and the Farmers' Market that we license, we have to do background checks on. It's not just the money. By charging, it is obligating us to do checks we otherwise don't do.

Saelens asked, based on the exemptions and discussion in the past, what about instead of delivering fish to the wholesaler they are charging more by selling off the dock. Croteau said it says that is included; it takes City infrastructure to operate. Saelens said what about the person engaged with delivery of goods from outside the City. They caught the fish outside Newport. Busby said that any commercial fishery catches outside of Newport and drops them off at the processing plant. Saelens said that person is operating as a business as far as he's concerned. Busby said that he doesn't want to go after every fisherman in town. Saelens said maybe if it's once, it's not such a big deal; but if it's all summer long, maybe they should have a business license. Busby said we have to make a conscious decision about selling retail off the boat. It's complicated. He asked, one individual has to have a business license, and the guy next to him doesn't? Saelens said they are selling to the plant that has a business license; they're kind of an employee. Years ago there were trucks coming here selling fish from their trucks, and the cherry stands; those are businesses. Busby said it doesn't stop there. Spencer said he has heard that question many times; and it's not clearly interpreted. Should we have exemptions for commercial fisheries unless they are delivering? Tokos said if they are selling and not delivering, that is a retail activity. The Chelsea Rose should have a business license. Saelens said if they deliver to the fish plant, they are more like the Snap-On-Tool truck. Tokos said we can talk about examples under item "D". He can put examples (e.g.). Saelens said if they are less than 20 hours entirely, then they are fine. Busby thought that for the 20-hour example in item "B" we should put the word "single" in front of business on the second line. Otherwise, someone could get around having a license by spending 20 hours selling cherries, 20 hours selling peaches, and 20 hours selling grapes.

Berman noted that on item "A" regarding garage sales it says no more than 4 days. If you did it on the weekend, that limits you to two garage sales. Tokos said that's what was in there. Berman wondered about putting "no more than four times at not more than 2-3 days." Croteau asked what about just 6 days. Murzynsky said that gives you two weekends. Croteau said it increases it a little but not to the point it becomes annoying more so than now.

Tokos noted that item “G” gets to the Embarcadero situation. It’s very similar to what Cannon Beach does. They are one of the few that deals with something we do; the transient aspect of it. It is consistent with how we deal with the business license to date. Saelens said if they don’t go through the Embarcadero, they have to have their own license. Tokos said they have to be compelled to have to go through them. They could go through there and two weeks later decide to do it on their own. It has to be a binding agreement; which is what the Landing has. Tokos said having one entity helps with the safety; when dealing with each individual owner, it’s more burdensome.

Croteau noted that on “F”, Officer Kittle wasn’t happy with more than one. Tokos said he assumes that’s pretty common. Busby said it’s restricted to long-term rental. Berman suggested inserting “consecutive” after 30. Busby said we could leave it as is. That’s the way it is now. Berman said the whole intent is that it’s monthly rentals, so maybe we should put in a range. Croteau thought that “consecutive” is okay and then leave it alone. Busby said the idea is to change the words to make it long-term rental.

Berman noted under “C” the special consignment store provides a list of all merchants. He asked what about a consignment store where he brings in for consignment a suit that doesn’t fit him anymore, and other individuals can too. Murzynsky said we are still dealing with one person either way. Berman said it seems burdensome for the consignment store owners. He thought the intent is more for the antique mall. He said theoretically you could catch the eBay store where anybody walks in and hands anything to them and they will sell it for you. Saelens said it implies they have to keep track of all people, and they basically do. Berman said, but it is not on the business license; and it says list. Saelens said maybe to say “maintains a list,” and upon request they need to produce that. Croteau said they could update the list at every annual renewal. Berman thought we shouldn’t bother with it unless it’s part of the calculation of the fee.

Tokos said Section .030 (“Fees”) is one where he restructured this a bit. He has noted that business license fees are required in a new leading paragraph and clarified it. The exemptions were moved. The not-for-profits are at no cost. He put in new language though that also requires documentation for that exemption and upon request is reviewed by the City Attorney. If they are saying they are, why are they exempted?

Berman said under “B” it says persons holding expired business license. It should be “delinquent or expired for more than 30 days.” Later on, we give those 30 days to renew it. He said that the non-expired on “C” is not necessary, but it doesn’t hurt to have it there. Saelens noted the example under “E”, someone under state or federal law. Busby said an example of that is ICC trucking that’s exempt. Saelens wondered if there would be anywhere where they would have a physical location. He said maybe we could have a State office that makes income because they charge; yet we wouldn’t be charging them for a business license. Busby agreed that would produce income for the State. Nebel asked about UPS and FedEx. Busby said they have licenses. He noted that they don’t operate the planes into the airport; they contract with airplane companies. He wondered if those airplanes are subject to licenses. They are dropping stuff off; but they also take stuff out. Berman said they are contractors, but they are almost like employees. He would say, no. Busby asked, then if you build a new skyscraper building and you have 100 different companies but one general contractor, he only needs the license? Saelens said OMSI could be a combination of local businesses inside the County and others outside. Nebel asked what about those contractors? Tokos said everybody will be working over 20 hours. Berman asked, so it’s not the case for flying airplanes? Busby noted that High Desert at the airport has independent drivers working for them. Croteau said these people fly for UPS; but is that their sole business? Busby said they do business in other places. They own, maintain, operate, and staff the airplane that brings the packages in. Croteau said it sounds like a business. Busby wondered if he was saying all contractors as well as these. Nebel wondered if they were exempt under ICC; and Busby didn’t believe so. He said we do have the delivery exemption. Is it if that was all they did that would do; but it’s because they carry stuff out? He said that’s not unlike the commercial fishermen. They leave empty. Croteau said here they are leaving full; it’s a business.

Saelens asked where we ended up on somebody who owns a business in multiple locations. Croteau noted that it says “and” under a different business name. Tokos said he thought that was written with an intentional “and.” He said that jurisdictions are all over the place on this one. Some require you get separate business licenses if you have more than one location; others say only one business license. Coos Bay requires you to get a separate license but pay only one fee. Beaverton is the one he borrowed from in an attempt to try to make it clear for Finance staff. We can put clear triggers; something like the businesses are not similar in nature. But, if you have one or more physical location and have a different name or different entity at that separate location, you have to pay a second license fee. He said Mo’s for example; if they have “Enterprise A”, and the second location is “Enterprise B”, they are different entities and would pay two licenses. If they were the same exact entity, we would allow them to pay for one license. Croteau asked if the City has to look at each business. Tokos said the other way is to say for any location, you get a separate license. Saelens said that he liked part of the first example shown on the PowerPoint. Tokos said that was Ashland. He threw that up there on the flip side. You have to be careful. What if you have a warehouse next to an office? For example, Abbey’s Carpet has retail downtown and a warehouse in South Beach. Should both require a license? Saelens thought the focus was on retail like Mo’s, the Candy Shop, or if there were two Subways. Busby said maybe one license if it’s substantially the same business. Croteau said that is what it says now basically. Tokos said Finance has been left in a discretionary world. That is why he put this in here. If it’s a different entity, they’re hit; if not, then they’re fine. Berman asked

what about Panini's and the Fire Pizza on the Bay Front. Tokos said then it's under a different name. Croteau said it's substantially saying that like with Mo's three locations, we have to take a look at them all. Tokos said if all three are under the same name and same entity, they can have one. Croteau said the City would have to do more with these than they do with a single business; but this is probably the best way to do it. Saelens said when the City is doing its due diligence, more time is probably spent on a Walmart than on a 10 x 10 retail that pays the same fee. Tokos said when we look at occupancies and zoning, it's the same work. Nebel said we do background checks for new businesses. Same ownership has required only one background check. Part of the City's effort might be multiplied by multiple locations; some not. Berman asked if we issue multiple pieces of paper. Murzynsky said he was pretty sure that we do. Regarding Panini's, Saelens said the buildings have two names, but maybe it's almost as if it were a single business and one is just "doing business as." Tokos said that's a different name. They may have the same tax ID number for both; but for all intents and purposes, to the public it looks like two different businesses.

Because time was running short, the review stopped at "Application." Discussion will pick up there at the next meeting, which will be set for some time in a couple of weeks.

Review of Draft Taxicab Ordinance Revisions. Busby suggested that everyone put their comments together on the taxicab ordinance and send them to Peggy Hawker since she is the primary author of the update and the maker of the modifications. The group can then go over that next time maybe as well as continue with the business license review. Busby noted also that the group still didn't come to a conclusion about airplanes, fish, and boats; and that is one thing we have to think about. Croteau asked if the group will receive a marked-up copy of the taxi cab ordinance. Tokos said yes, if everyone will email Hawker with their notes, we will get one out.

Establish Next Agenda & Meeting Date: The next meeting was scheduled for Monday, September 22nd at 3:00 p.m. The agenda will be to finish the business license review and look at the taxicab ordinance. Busby said the group should be about ready to set the time for when to take it to the City Council for public hearing. He said the group will have to address the fee structure; or we may just leave it up to the City Council. Tokos said that he can put that as a discussion item for the next meeting.

Adjournment. Having no further business, the meeting adjourned at 3:55 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant